

CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION
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Attorney for John Garamendi, Insurance Commissioner

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

In the Matter of

POWERTRAIN WARRANTY, Inc.

And

GUILLERO D. JALIL, President of
POWERTRAIN WARRANTY, INC.

Respondents.

ORDER TO SHOW CAUSE RE.
MONATARY PENALTIES PURSUANT TO
CAL. INS. CODE SECTION 790.035 AND
790.05

File No. VSC 162 – AP

File No. VSC 174 – AP

1. The California Department of Insurance, Legal Division (hereafter "Department") brings this matter before the Insurance Commissioner of the State of California. The Insurance Commissioner is the principal government regulator of insurance in California, pursuant to Cal. Ins. Code section 12900 *et seq.*¹

2. This proceeding is governed by the California Administrative Procedures Act, Chapter 5, commencing with Government Code section 11500 *et seq.*

3. The Department brings this matter pursuant to Cal. Ins. Code sections 790.035 and 790.05 which grant the Commissioner authority to issue impose a monetary penalty to a person, as defined in Cal. Ins. Code section 19, who has engaged or is engaging in California in any unfair method of competition.

¹ All citations are to the California Insurance Code, unless otherwise indicated.

4. Pursuant to Cal. Ins. Code section 116(b), automobile insurance is defined as “any contract of warranty, or guaranty that promises service, maintenance, parts replacement, repair, money, or any other indemnity in event of loss of or damage to a motor vehicle or any part thereof from any cause, including loss of or damage to or loss of use of the motor vehicle by reason of depreciation, deterioration, wear and tear, use, obsolescence, or breakage if made by a warrantor or guarantor who or which as such is doing an insurance business.”

5. Pursuant to Cal. Ins. Code section 116.5, automobile service contracts issued by a manufacturer of motor vehicle lubricants, treatments, fluids, or additives are exempt from Cal. Ins. Code section 116(b), if they comply with the requirements of Cal. Ins. Code section 116.5.

6. Pursuant to Cal. Ins. Code section 116(d) a third party obligor may sell vehicle service contracts in California through dealers if they have a fire and casualty broker-agent licensed, comply with other financial solvency requirements, have a backup insurance policy providing coverage for the obligation of the contracts, and limit the benefits to defects in material and workmanship, including towing and substitute transportation.

7. Pursuant to Cal. Ins. Code section 116(e) doing or proposing to do any business in substance equivalent to the business described in Cal. Ins. Code section 116 in a manner designed to evade the provisions of this section is the doing of an insurance business.

8. The Commissioner has not licensed either PowerTrain Warranty, Inc. (“PowerTrain”) or Guillero D. Jalil (“Jalil”) to act in any capacity.

FACTUAL ALLEGATIONS

9. During the approximate period of June 2003 to present, PowerTrain has sold limited product warranties in California that promise to repair, replace or reimburse the contract holder for the costs required to repair or replace the engine, transmission, transfer case (4X4), seals and Gaskets, and cooling system of a motor vehicle. The cost to the consumer is based upon the vehicle the lubricant is used in, not the lubricant, even though the lubricant does not vary between vehicles. The dealer sets the cost of the lubricant/limited product warranty. However, each vehicle receives the same lubricant. PowerTrain is in the business of providing automotive related products, warranties, and services. Muscle Products Corporation manufactures the

1 products that PowerTrain provides with the limited product warranty. PowerTrain's selling of a
2 limited product warranty on a product that they do not manufacture violates Cal. Ins. Code
3 sections 116(b), (d), and 116.5.

4 10. During the approximate period of June 2003 through October 2003, PowerTrain
5 sold limited product warranties in California, which offered towing, and Rental Car Expenses, in
6 violation of Cal. Ins. Code sections 116(d) and 116.5.

7 11. During the approximate period of June 2003 through present PowerTrain sold
8 limited product warranties in California that did not include a toll free telephone number on the
9 agreement for the consumer to call with questions about the lubricants, treatments, fluids, or
10 additives, in violation of Cal. Ins. Code section 116.5(c)(3).

11 12. During the approximate period of June 2003 through present, PowerTrain sold
12 limited product warranties in California yet do not have a fire and casualty broker-agent license,
13 do not have an insurance policy that provides coverage for the obligation of the contracts, and
14 have not complied with Cal. Ins. Code section 116(d)(3) financial solvency requirements.
15 PowerTrain's conduct constitutes violations of Cal. Ins. Code section 116(d)(1)(2) and (3).

16 13. During the approximate period of June 2003 through present PowerTrain has held
17 itself out as a manufacturer of lubricants even though it purchases the lubricants from Muscle
18 Products Corporation in an attempt to evade the provisions of Cal. Ins. Code section 116, thereby
19 violating Cal. Ins. Code section 116(e).

20 14. During the approximate period of June 2002 through present, PowerTrain engaged
21 in unfair competition by selling limited product warranties in violation of Cal. Ins. Code section
22 790.035, which states that any person who engages in unfair competition is liable to the state for a
23 civil penalty not to exceed \$5,000 for each act, or \$10,000 per act if the act was intentional.
24 PowerTrain competed unfairly with similar companies that incurred the expense and effort to
25 obtain a fire and casualty broker-agent license in order to comply with Cal. Ins. Code section
26 116(d). PowerTrain also competed unfairly with similar companies that did not offer
27 impermissible benefits in their product warranties or vehicle service contracts. PowerTrain also
28 competed unfairly with companies who complied with Cal. Ins. Code section 116.5.

15. During the approximate period of April 2003 through present, Jalil has been the president of PowerTrain and is responsible for PowerTrain's operation. Jalil's failure to ensure that PowerTrain operated in compliance with the California Insurance Code constitutes grounds under Cal. Ins. Code section 1748.5 to prohibit Jalil from participating in any manner in the business of insurance.

GROUNDWORK FOR RELIEF

16. The facts alleged in paragraphs 1 – 14 constitute grounds for the Commissioner to issue an order requiring PowerTrain to pay a monetary penalty pursuant to Cal. Ins. Code sections 790.035 and 790.05. PowerTrain is potentially liable under Cal. Ins. Code section 790.035 for a monetary penalty of \$10,000 for each of limited product warranty sold by PowerTrain to California consumers.

17. The facts alleged in paragraphs 1 – 15 constitute grounds for the Commissioner to prohibit Jalil from participating in any manner in the business of insurance pursuant to Cal. Ins. Code section 1748.5

ORDER TO SHOW CAUSE

18. Respondent is hereby ordered to appear at a hearing and show cause, if any cause exists, why the Commissioner should not issue the orders referred to in paragraphs 16 - 17.

Dated:

JOHN GARAMENDI
Insurance Commissioner

By _____
Jose Aguilar
Assistant Chief Counsel